

117TH CONGRESS  
2ND SESSION

# H.R. \_\_\_\_\_

## A BILL

To amend federal law to create expungement mechanism and a process to petition for expungement for low-level violations of the Controlled Substances Act as it relates to marijuana, to study impact of expungements issued, and for other purposes

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES  
\_\_\_\_\_, \_\_\_\_ 2022

M\_\_\_\_. \_\_\_\_\_ introduced the following bill; which was referred to the Committee on \_\_\_\_\_

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SEC 1. SHORT TITLE**

This Act may be cited as the Marijuana Misdemeanor Expungement Act

### **SEC 2. DEFINITIONS**

**(a) DEFINITIONS.** As used in this section:

(1) CRIMINAL JUSTICE AGENCY. The term “criminal justice agency” means —

(A) a Federal or State court.

(B) a governmental agency or any subunit thereof that:

- (i) performs the administration of criminal justice pursuant to a statute or executive order, and allocates a substantial part of its annual budget to the administration of criminal justice;
- (ii) is designated by Congress, the President, the Attorney General of the United States, the Federal Bureau of Investigation, or other appropriate federal official, to perform centralized recordkeeping functions for official records, including the collection, storage, maintenance, updating, and dissemination of such records and responding to requests for information in or about such records; or

- (iii) is designated by the Governor or other appropriate executive official or the legislature of a State to perform centralized recordkeeping functions for official records, including the collection, storage, maintenance, updating, and dissemination of such records and responding to requests for information in or about such records.
  - (C) a Federal or State inspector general in his or her review of other criminal justice agencies.
- (2) OFFICIAL RECORD. —
- (A) The term “official record” means any documentation or other information on an individual, in electronic or physical form, consisting of identifiable descriptions or notations by criminal justice agencies about that individual, regarding:
    - (i) detection activities, investigations (including police questioning and searches and seizures), and arrests conducted by criminal justice agencies, as well as their decisions not to refer cases for legal proceedings;
    - (ii) institution of legal proceedings by indictment, complaint, information, other formal criminal charge, summons or citation, and notice of civil penalty; and
    - (iii) legal results or consequences of (i) and (ii), including court-ordered detention, pretrial and post-trial release, diversion, non-prosecution or deferred prosecution, deferred adjudication, pleas (*e.g.*, not-guilty pleas, guilty pleas, and *nolo contendere*), *nolle prosequi*, competence findings, dismissal, acquittal, conviction, mistrial, juvenile adjudication, sentencing, correctional supervision, rehabilitation, probation, parole, release, and civil penalty.
  - (B) The term does not include identification information, such as fingerprint records, if such information does not indicate involvement of the individual with an “expungable event” as defined by subsection (a)(8).
- (3) EXPUNGE. The term “expunge” means to remove an official record and any references to such record in another official record (including an official index or list) or in other public records, except for publicly available court opinions and legal briefs.
- (4) SEAL. The term “seal” means to store securely any expunged records possessed by the court issuing the expungement order to prevent access to such records except pursuant to subsection (e) or by further order of the court.
- (5) SEQUESTER. The term “sequester” means to retain an unaltered nonpublic copy of an official record and any other record or index subject to an expungement order, and to store such records in a separate, secure area to prevent access to those records except pursuant to subsection (e) or by further order of the court issuing the expungement order.
- (6) REDACT. The term “redact” means to remove or obscure from an official record any references to an expunged record, including, as necessary and consistent with subsection (a)(2)(B), any identifying information.
- (7) MARIJUANA. The term “marijuana” means the substance defined as “marihuana” in 21 U.S.C. § 802(16) and also defined or referred to as “marijuana” (*e.g.*, 18 U.S.C. § 1791(d)(1)(B), 21 U.S.C. § 863(d)) and “tetrahydrocannabinols” (*e.g.*, 21 U.S.C. § 812(c)).
- (8) EXPUNGABLE EVENT. —

- (A) The term “expungable event” means an arrest, the initiation of legal proceedings, and any legal results or consequences, as defined by subsection (a)(2)(A)(i)-(iii), for violating, attempting to violate, or conspiring to violate the following, as well as sentencing (including probation) and imposition of civil penalty pursuant to the following:
- (i) 21 U.S.C. § 841(b)(4).
  - (ii) 21 U.S.C. § 842(c)(2), where the controlled substance was marijuana.
  - (iii) 21 U.S.C. § 844(a), where the controlled substance was marijuana.
  - (iv) 21 U.S.C. § 844a, where the controlled substance was marijuana.
  - (v) 18 U.S.C. § 13, where the underlying act or omission involves marijuana, including marijuana-related drug paraphernalia (as defined by 21 U.S.C. § 863), and results in a federal misdemeanor or civil penalty.
  - (vi) 18 U.S.C. § 3607, where the controlled substance was marijuana.
  - (vii) any other federal misdemeanor, petty offense, infraction, or civil penalty involving marijuana, including marijuana-related drug paraphernalia, in which the conduct constituting the offense did not involve the use, attempted use, or threatened use of physical force against the person or property of another.
- (B) To be considered an expungable event for purposes of subsections (b) and (c):
- (i) at least one year must have passed since the date of the arrest or since the last docket entry in the case (except for technical or unrelated entries and other minor issues, as determined by the court), whichever is latest; and
  - (ii) the court must not have been informed by the Attorney General of the United States, the United States Attorney for the relevant district, the Federal Bureau of Investigations, or another Federal criminal justice agency, that the case is ongoing or the individual has evaded prosecution.

### **SECTION 3 - COURT REVIEW FOR EXPUNGEMENT. —**

- (1) PROCEDURES. Not later than 1 year after the date of the enactment of this section, the Chief Justice of the United States shall promulgate procedures or practices for the review, expungement, sealing, sequester, and redaction of official records pursuant to and consistent with this section, and to facilitate the study of such records pursuant to subsection (e). In determining such procedures or practices, the Chief Justice of the United States and his or her designees—which, at the discretion of the Chief Justice, may include the Administrative Office of the United States Courts, the Federal Judicial Center, and the Judicial Conference of the United States—may consult with relevant entities, including the Attorney General of the United States and his or her designees (including Federal Bureau of Prisons and any agency, as defined by 18 U.S.C. § 6, within the United States Department of Justice), representatives of the United States Sentencing Commission, representatives of the Federal Defenders Organizations, nonpartisan scholars and subject-matter experts, and, for purposes of subsection (e), the Comptroller General of the United States and his or her designees.
- (2) REVIEW. Not later than 2 years after the date of the enactment of this section, each Federal district shall conduct a comprehensive review and issue an order expunging, sealing, and sequestering:
- (A) each official record for an expungable event; and

(B) other official record(s) related to or referencing an expungable event, unless such other official record is for or related to a felony or a misdemeanor unrelated to marijuana, in which case the court shall redact from such other official record any reference to the expunged official record, and seal or order the sequester of an unaltered nonpublic copy of such other official record.

(3) NOTIFICATION OF EXPUNGEMENT. —

(A) GOVERNMENT. Not later than 7 days after issuing an expungement order, to notify affected criminal justice agencies and to facilitate the timely update of relevant records, the court shall send a copy of the final order to:

- (i) the Attorney General of the United States, the United States Attorney for that district, and the relevant criminal justice agency (as defined by subsection (a)(1)(B)(ii)); and
- (ii) the relevant criminal justice agency (as defined by subsection (a)(1)(B)(iii)) that serves the jurisdiction in which the expungable event occurred or, if no such agency exists, the chief law enforcement officer of the State in which the expungable event occurred.

(B) INDIVIDUALS. —

- (i) Pursuant to procedures or practices established under subsection (b)(1):
  - (aa) notification about the expungement of official record(s) and the effect of such expungement shall be provided to individuals whose arrest, legal proceedings, and any legal results or consequences, as defined by subsection (a)(2)(A)(i)-(iii), have been expunged; and/or
  - (bb) a reasonable process shall be available so that such individuals may inquire as to whether an arrest, legal proceedings, and any legal results or consequences have been expunged and, if so, the effect of such expungement.
- (ii) Upon motion or written request of an individual whose arrest, legal proceedings, and any legal results or consequences, as defined by subsection (a)(2)(A)(i)-(iii), have been expunged pursuant to this subsection, the court shall send a copy of the final order to:
  - (aa) the relevant criminal justice agency (as defined by subsection (a)(1)(B)(iii)) that serves the jurisdiction in which the individual resides or, if no such agency exists, the chief law enforcement officer of the State in which the individual resides.
  - (bb) any local law enforcement agency that serves the jurisdiction in which the individual resides.

(C) NO NEW RECORDS. Any notifications pursuant to subsections (A) and (B) shall not be or become publicly accessible records that identify the individual subject of the expungement order, and such notifications shall not be used by criminal justice agencies except for purposes of complying with this section and court orders issued pursuant to it.

(4) APPEAL. The Attorney General of the United States and the United States Attorney for the district from which the expungement order was issued may appeal an order, within 60 days of its issuance, to the United States Circuit Court of Appeals for that district.

**SECTION 4 PETITIONING COURT FOR EXPUNGEMENT. —**

- (1) PETITION. At any point after the date of enactment of this section, any individual with an official record for an expungable event may file a motion for expungement in the court for the Federal district in which the arrest, legal proceedings, and any legal results or consequences, as defined by subsection (a)(2)(A)(i)-(iii), was obtained. A petition filed *pro se* shall be construed liberally so as to ensure substantial justice (*see, e.g., Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).
- (2) SERVICE AND RESPONSE. The clerk of the court shall serve that petition on the United States Attorney for that district. Not later than 60 days after service of such petition, the United States Attorney may submit a response to the Petitioner's motion.
- (3) REPRESENTATION AND FEES. No fee shall be imposed for filing a petition in any proceeding provided for under this subsection. If an indigent Petitioner submits a facially viable claim for expungement that nonetheless requires the assistance of legal counsel for purposes of filing a superseding petition, presenting evidence in support of the petition, or responding to the Government, counsel shall be appointed to represent the individual in proceedings under this subsection.
- (4) EVIDENCE AND STANDARD OF PROOF. The Petitioner and the Government may file with the court relevant evidence relating to the petition. Notwithstanding any Federal rule of evidence or procedure, the court shall have discretion in admitting and evaluating the petition and any evidence submitted by a Petitioner *pro se* (*cf. Haines v. Kerner*, 404 U.S. 519, 520 (1972)). The Petitioner bears the initial burden to establish a prima facie case that the official record in question is for an expungable event, at which point the burden shifts to the Government to establish by a preponderance of the evidence that the official record is not for an expungable event or the requirements for expungement have not been met. If the Government fails to meet this burden, or if the Government fails to respond to the petition, the court shall enter an appropriate expungement order unless it finds by a preponderance of the evidence that the interests of justice and of public safety weigh against expungement.
- (5) EXPUNGEMENT ORDER. If required under this section, the court shall order the expungement, sealing, sequester, and redaction of official records of the arrest, legal proceedings, and any legal results or consequences, as defined by subsection (a)(2)(A)(i)-(iii). The court may also order the expungement, sealing, sequester, and redaction of another official record related to or referencing an expungable event, unless such other official record is for or related to a felony or a misdemeanor unrelated to marijuana, in which case the court shall redact from such other official record any reference to the expunged official record, and seal or order the sequester of an unaltered nonpublic copy of such other official record.
- (6) NOTIFICATION OF EXPUNGEMENT. —
  - (A) Not later than 7 days after granting an expungement petition, to facilitate the timely update of relevant records, the court shall send a copy of the petition and final order to:
    - (i) the Attorney General of the United States, the United States Attorney for that district, and the relevant criminal justice agency (as defined by subsection (a)(1)(B)(ii)); and
    - (ii) the relevant criminal justice agency (as defined by subsection (a)(1)(B)(iii)) that serves the jurisdiction in which the expungable event occurred or, if no such

agency exists, the chief law enforcement officer of the State in which the expungable event occurred.

(B) Upon motion or written request of a Petitioner whose expungement petition was granted, the court shall send a copy of the petition and final order to:

- (i) the relevant criminal justice agency (as defined by subsection (a)(1)(B)(iii)) that serves the jurisdiction in which the Petitioner resides or, if no such agency exists, the chief law enforcement officer of the State in which the Petitioner resides, when such criminal justice agency or chief law enforcement officer is different from those notified pursuant to subsection (c)(6)(A)(ii).
- (ii) any local law enforcement agency that serves the jurisdiction in which the Petitioner resides.

(C) Notifications pursuant to this subsection shall not be or become publicly accessible records about the expungable event, including information identifying the individual subject of the expungement order; and such notifications shall not be used by criminal justice agencies except for purposes of complying with this section and court orders issued pursuant to it.

(7) APPEAL. The Attorney General of the United States and the United States Attorney for the district in which the expungement order was issued may appeal an order within 60 days of its issuance to the United States Circuit Court of Appeals for that district. Within 60 days of the denial of his or her petition, the Petitioner may appeal that denial to the United States Circuit Court of Appeals for that district.

## **SECTION 5 EFFECT OF EXPUNGEMENT. —**

(1) IN GENERAL. An order of expungement shall restore the affected individual, in the contemplation of the law, to the status he or she occupied before such arrest, legal proceedings, and any legal results or consequences, as defined by subsection (a)(2)(A)(i)-(iii), for an expungable event.

(2) SELF-DISCLOSURE. An affected individual may treat the expunged arrest, legal proceedings, and any legal results or consequences, as defined by subsection (a)(2)(A)(i)-(iii), as if it never occurred and shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement for failure to disclose, recite, or acknowledge such official record.

(2) DISQUALIFICATION. The fact that an individual has an official record, including a conviction, for an expungable event shall not operate as a disqualification of such individual to pursue or engage in any lawful activity, occupation, or profession.

(3) LIMITATIONS. —

(A) Expungement under this section does not include an official record of conduct constituting a felony or a misdemeanor unrelated to marijuana, and such official record may be accessed, with any redactions, pursuant to this section or by further order of the court issuing the expungement order.

(B) Nothing in this section is intended to create a right to compensation, restitution, or any other monetary damages.

(4) COMPLIANCE. —

(A) This section and courts orders issued pursuant to it shall apply to:

- (i) criminal justice agencies in the Federal government.

- (ii) other Federal agencies in possession of expunged documents or related official documents.
- (iii) state criminal justice agencies subject to Federal law, due to the powers delegated to the Federal government by the Constitution of the United States, due to voluntary agreement of the relevant State, and/or due to that State's acceptance of relevant Federal funding:
  - (aa) where such Federal law may include in relevant part: 28 C.F.R. § 0.85(j); 28 C.F.R. Part 20 (Criminal Justice Information Systems); 28 C.F.R. Part 23 (Criminal Intelligence Systems Operating Policies); 28 C.F.R. Part 25(A) (The National Instant Criminal Background Check System); 28 C.F.R. § 50.12 (Exchange of FBI identification records); 5 U.S.C. § 9101; 18 U.S.C. § 922; 28 U.S.C. § 534; 34 U.S.C. Chapter 101 (Justice System Improvement); 34 U.S.C. Chapter 403 (Criminal Justice Identification, Information, and Communication); 34 U.S.C. Chapter 409 (National Instant Criminal Background Check System); 34 U.S.C. Chapter 411 (Access to Criminal History and Identification Records); 34 U.S.C. § 40102; 34 U.S.C. § 40743; 34 U.S.C. § 12592(d); and
  - (bb) where such Federal law and its application are consistent with relevant decisions of the Supreme Court of the United States, including: *South Dakota v. Dole*, 483 U.S. 203 (1987); *New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997); *Reno v. Condon*, 528 U.S. 141 (2000); *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012); and *Murphy v. National Collegiate Athletic Association*, 138 S. Ct. 1461 (2018).
- (vi) Any consumer credit agency (as defined by 15 U.S.C. § 1681a(f)) subject to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*
- (B) Individuals, agencies, and other entities or organizations covered by Subsection (d)(4)(A):
  - (i) shall comply with a court order issued pursuant to this section and, to the extent possible, conform their official records to be consistent with such order;
  - (ii) shall respond to any inquiries as though the expunged records do not exist; and
  - (iii) shall not disseminate, use internally, or reveal the existence of expunged records for any purpose, except as authorized under this section or by further order of the court issuing the expungement order.

## **SECTION 6 ACCESS, STUDY, AND SUPPORT. —**

- (1) ACCESS. Any expungement of an individual's official record for an expungable event or any related sealing, sequester, and redaction of relevant records pertaining to that individual, may be made available only:
  - (A) to that individual or to such individual's designated agent.
  - (B) to the Chief Justice of the United States and his or her designees (including for support under subsection (e)(3)(A)).
  - (C) to the Comptroller General of the United States and his or her designees (including for support under subsection (e)(3)(B)) for purposes of conducting the study described in subsection (e)(3).

- (D) to a criminal justice agency (as defined by subsection (a)(1)), for the exclusive purpose of:
    - (i) maintaining accurate official records.
    - (ii) investigating or prosecuting an individual or for conducting a background check on an individual who has applied for employment by such criminal justice agency, but only when the relevant official record is of conduct constituting a felony or a misdemeanor unrelated to marijuana and such record has appropriate redactions of any reference to official records expunged pursuant to this section.
  - (E) to the United States Department of Justice's Office of Justice Programs (and its units or subunits), and to qualified academic researchers from relevant schools and centers at accredited non-profit universities and colleges, for purpose of research, evaluative, or statistical activities pursuant to an agreement with the Chief Justice of the United States and his or her designees (including the Administrative Office of the United States Courts) that specifically authorizes access to the information, limits the use of the information to research, evaluative, or statistical purposes, and insures the confidentiality and security of the information consistent with this section and with Federal law.
- (2) **STUDY.** The Comptroller General of the United States, in consultation with the United States Secretary of Health and Human Services, shall conduct a study of arrests, legal proceedings, and any legal results or consequences, as defined by subsection (a)(2)(A)(i)-(iii), for federal marijuana-related misdemeanors, petty offenses, infractions, and civil penalties.
- (A) **DEMOGRAPHICS.** Such study shall include information about the age, race, ethnicity, sex, and gender identity of those individuals with an official record for an expungable event, as well as information about the type of community such individuals dwell in and such other demographic information as the Comptroller General determines should be included.
- (B) **REPORT.** Not later than 2 years after the date of the enactment of this section, the Comptroller General of the United States shall report to Congress the results of the study conducted under this subsection. In consultation with the Chief Justice of the Supreme Court, the Comptroller General of the United States shall also report to Congress on the implementation of this section, including issues relevant to future expungement efforts (*e.g.*, expungement of federal marijuana-related felonies, expungement of federal offenses for other controlled substances, models for automatic record-clearing and for general expungement).
- (3) **SUPPORT.** In addition to federal funding and other resources afforded for staffing and implementation of this section:
- (A) at the discretion of the Chief Justice of the United States and his or her designees (including the court for the district at issue) and pursuant to rules and procedures established by the Chief Justice, legal researchers and law students from eligible non-profit law schools accredited by the American Bar Association, as well as academic researchers and students from other relevant schools and centers at accredited non-profit colleges and universities, may be retained (including on a pro bono basis) to conduct research and provide other support for the implementation of this section.
- (B) at the discretion of the Comptroller General of the United States and his or her designees and pursuant to rules and procedures established by the Comptroller General,



legal researchers and law students from eligible non-profit law schools accredited by the American Bar Association, as well as academic researchers and students from other relevant schools and centers at accredited non-profit colleges and universities, may be retained (including on a pro bono basis) to conduct research and provide other support for the study described in subsection (e)(2).

**SECTION 7 PARDON REFERRAL.** After issuing an order of expungement under subsection (b) or subsection (c), upon a finding of good cause, the court may refer the case or petition to the President of the United States and his or her designees (including the Pardon Attorney of the United States, notwithstanding 28 C.F.R. Part 1 (Executive Clemency)), for review consistent with the authority granted to the President under Article II, section 2 of the Constitution of the United States.

**SECTION 8 INAPPLICABILITY.** The Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C. Appendix, shall not apply to this section and to orders or other actions taken pursuant to it.

**SECTION 9 INTERPRETATION AND SEVERABILITY.** —

- (1) Nothing in this section should be construed to preempt or supersede the laws of any State with respect to its authority to define and enforce the criminal law of that State, or with respect to any power reserved to the States respectively, or to the people, or to any citizen as a right, under the Constitution of the United States. This section does not annul, alter, or affect, or exempt any person subject to this section from complying with, the laws of any State, except to the extent that those laws are inconsistent with the provisions of this section, and then only to the extent of the inconsistency. This section shall not in any way abridge or alter the remedies now existing at common law or by statute, but consistent with subsection (d)(3)(B), the provisions of this section are in addition to such remedies.
- (2) If any provision of this section or the application thereof to any person or circumstance is held invalid, the remainder of this section, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.

**SEC. 10. EFFECTIVE DATE.**

This Act and the amendments made in shall take effect 180 days after the date of enactment of this Act.